

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)
)
 Case No. 2:20-mj-00101-JHR
v.)
)
ALEXANDER BURNHAM)

**DEFENDANT'S MOTION TO CONDUCT CHANGE OF PLEA HEARING BY VIDEO
TELECONFERENCE PURSUANT TO GENERAL ORDER 2020-11**

NOW COMES, DEFENDANT, ALEXANDER BURNHAM, by and through Zerillo Law Firm, LLC, who files the within *Motion to Conduct Change of Plea Hearing By Videoconference* and respectfully states as follows:

1. Defendant requests that a Change of Plea Hearing be scheduled by video teleconference.
2. Defendant has been advised of and understands his right to be physically present at his Change of Plea Hearing; he is aware of this Court's Orders suspending and limiting certain court appearances due to the COVID-19 crisis; and he requests his Change of Plea Hearing be conducted *via* video pursuant to, and consistent with, the provisions contained in the General Order entered in this District on July 30, 2020 by Chief U.S. District Court Judge Jon D. Levy.
3. Under these circumstances, Defendant hereby waives his right to be physically present at his Change of Plea Hearing and requests leave to participate in this hearing, along with his counsel, *via* videoconference so that it might be expeditiously concluded.
4. The Defendant and his counsel represent that the change of plea in this case cannot be further delayed without serious harm to the interests of justice, for the reasons set forth more specifically below.

5. Defendant is currently held on probation revocation allegations in Maine State Court (Cumberland County Unified Criminal Docket, PV-17-3976 and PV-18-515). The State probation revocations are based on the same conduct as is alleged in the instant matter. Defendant's next appearance in the State probation matters are in October.

2. At his initial appearance in this matter, the Defendant did not make a detention argument. However, the Court did enter a conditional or "springing" detainer, whereby if he was released from the State probation hold, he would go into Federal custody.

3. Counsel has tried both informally, and formally through a State Court *Motion to Amend Bail*, to convince the State Court and Prosecutor (Assistant District Attorney Amanda Doherty) to release the Defendant to Federal custody. The Court has denied the *Motion to Amend Bail* and ADA Doherty has, to date, been unwilling to release the Defendant from the probation hold.

4. AUSA Meghan Connelly and the Undersigned have engaged in conversations regarding Mr. Burnham's plea to an Information, charging violations of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 18 U.S.C. §§ 922(g)(1) and 924(a)(2). These are very serious charges, of course, and Mr. Burnham has a reasonably serious criminal history. It is likely that a significant sentence is in the offing.

5. In any event, it is extremely likely that the sentence for Defendant's plea to the Information will exceed the probation violations time he serves (of which, the maximum combined sentence for a revocation of both State probations is 32 months).

6. Which leads to the two primary reasons why a plea to an Information by video is essential to the interests of justice: 1) it will set us on a course for sentencing in this Court, allowing the Defendant to begin receiving credit for time served once he is in federal custody and 2) if a plea is accepted by this Court, ADA Doherty has indicated that she would reconsider continuing the probation hold.

7. The credit for time served issue is very unfortunate. It means that Defendant has been doing “dead time” since April, when he went into State custody. Since, he cannot get himself released from State custody, and cannot plead to the instant proceeding unless it is done by video, it is conceivable that he could spend the better part of a year, with no credit for time served, before he came up for federal sentencing.

8. Magistrate Judge John Rich, on August 6, 2020, issued a Speedy Trial Order in this case, pursuant to the Court’s General Order 2020-12, granting the Court’s own motion to continue this matter through as late as October 30, 2020, for speedy trial purposes.

9. The Court’s General Order 2020-11 was crafted for the very issue this case presents. It indicates that “In all felony plea proceedings, including...a plea to an information...any defendant who consents, after consultation with counsel, to proceed by video teleconference may file a motion requesting permission to proceed by video teleconference.”

10. The Undersigned has consulted with Defendant, who consents to proceeding by video teleconference for the purpose of entering a plea to an Information. As described above, further delay will cause the Defendant to continue to serve a longer sentence than he would otherwise receive in sentencing, by virtue of the fact that his is accumulating no credit for time served.

WHEREFORE, the Defendant respectfully requests that this Honorable Court permit a Change of Plea Hearing in this matter be conducted *via* videoconference pursuant to Chief Judge Levy's General Order 2020-11.

Dated this 7th day of August, 2020 in Portland, Maine.

Respectfully Submitted,
ZERILLO LAW FIRM, LLC

Timothy E. Zerillo, Bar No. 9108
Attorney for Alexander Burnham
1250 Forest Avenue, Ste 3A
Portland, ME 04103
tim@zerillolaw.com

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CERTIFICATE OF SERVICE

I, Timothy E. Zerillo, Esq., hereby certify that I have caused to be served *via* ECF the **DEFENDANT'S MOTION TO CONDUCT CHANGE OF PLEA HEARING BY VIDEO TELECONFERENCE PURSUANT TO GENERAL ORDER 2020-11** to all counsel of record.

Dated this 7th day of August, 2020 in Portland, Maine.

Respectfully submitted,
ZERILLO LAW FIRM, LLC

/s/ Timothy E. Zerillo
Attorney for Alexander Burnham
1250 Forest Avenue, Suite 3A
Portland, Maine 04103
207.228.1139